Wee Chong Jin C.J. (Singapore) and **Tan Ah Tah F.J.** concurred.

Judgment of the court below varied.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

VASUDEVAN PILLAI & ANOR. v. CITY COUNCIL OF SINGAPORE

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Wee Chong Jin C.J. (Singapore)) February 22, 1965]

[Singapore — Federal Court Civil Appeal No. 90 of 1963]

Master and Servant — Summary dismissal — Refusal to obey lawful orders of employers — Inquiry — Failure to comply with rules of natural justice.

Administrative Law — Domestic tribunal — Natural justice — Failure to comply with rules of — Not curable on appeal.

The appellants claimed a declaration that their dismissal from the employment of the defendants was wrongful. The trial judge found on the facts that the City Council were justified in dismissing the appellants as they had refused to obey lawful orders. He also found that the officer who conducted the inquiry relating to the appellants had not complied with the rules of natural justice but that this failure had been cured, by proceedings before the sub-committee of the establishments committee. The appellants appealed.

Held: as the appellants had deliberately refused to do work which fell within the scope of their employment the respondents were entitled to dismiss them summarily.

Per Wee Chong Jin C.J. (Singapore): The trial judge was wrong in saying that though there had been a failure to comply with the rules of natural justice by the inquiry officer this had been cured by proceedings before the sub-committee of the establishments committee. Where a quasi-judicial tribunal has failed to observe the rules of natural justice, such failure cannot be cured by the fact that on the appeal, the appellate tribunal has so conducted its proceedings as to observe all the rules of natural justice.

Cases referred to:—

(1) *Annamunthodo* v. *Oilfields Workers' Timber Union* [1961] A.C. 945; [1961] 3 All E.R. 621.

(2) *Andrea* v. *British Italian Trading Co. Ltd.* [1962] 1 Lloyd's L.R. 151.

FEDERAL COURT.

L. A. J. Smith for the appellants.

J. Grimberg for the respondents.

Cur. Adv. Vult.

Thomson L.P.: I have had the benefit of reading the judgment of the Chief Justice in Singapore and I am in agreement with the result at which he has arrived. I have, however, arrived at that result by a somewhat different course of reasoning which I desire to state very briefly.

I agree with his Lordship and with the trial judge that on the evidence it is clear beyond any question that the plaintiffs who were employed by the City Council as labourers deliberately refused to do work which fell within the scope of their employment. In other words they refused to do what they had agreed to do. This was clearly a repudiation by them of their contract with the City Council. The fact that it was based on a view held in good faith but which the court below and this court have held to be wrong has nothing to do with the case. They could have taken the view of the courts on the point but they decided to act on their own view and like other people who act on a mistaken view of the law they must take the consequences. Here the consequences are that in the circumstances the City Council were entitled, if they saw fit, to treat the contract as at an end. That is just what they did. In popular language they dismissed the plaintiffs.

I say "in popular language" for in cases of this nature a certain confusion of thought would be avoided if it were appreciated that in relation to contracts of employment the word "dismiss" may have any one of three entirely different meanings:—

(1) it may be applied to the action of an employer in putting an end to the contract of employment in accordance with its own terms as by giving notice;

(2) it may be applied where the employer purports to put an end to the contract otherwise than in accordance with its provisions, in other words where the employer repudiates the contract;

(3) it may be applied where, as here, the employee repudiates the contract and the employer exercises his right to treat the contract as being thereby at an end.

Before departing from the case I would, with great respect, observe that I really fail to see the relevant of the argument which was pressed upon us so strongly, but regarding which I express no opinion, that there was some sort of failure of what is called natural justice on the part of the City Council.

The original dispute between the plaintiffs (or rather their trade union) and the City Council was as to whether or not the work which the plaintiffs refused to do was unskilled work falling within the scope of their employment which they were not entitled to refuse or skilled work which was outside the scope of their employment and which they were entitled to refuse. It was not until more than five years after the commencement of the action, and indeed after the trial had actually begun, that the natural justice argument was imported into the case at all.

As I understand it that argument was based on the proposition that it was a condition of the plaintiffs' contract of employment that if the employee repudiated the contract then the employer should not be at liberty to accept that repudiation unless he conducted an inquiry into the circumstances in which it took place and that that inquiry should be conducted in accordance with the principles of so-called natural justice.

I can find nothing in the evidence, and neither presumably could counsel for the plaintiffs during the first five years of the action's life, to make out such a contract.

In any event, if the case had been the other way round, if the defendants had said it was a term of the contract that the plaintiffs should accept as conclusive the decision of a domestic tribunal as to whether or not they had repudiated the contract and if such a term had been made out, then, apart from any question of ouster of jurisdiction of the courts, it would have been a good reply on the part of the plaintiffs to say: "Yes, but the inquiry was not conducted in accordance with the principles of natural justice. We are not bound to accept its result. We are entitled to have the question between us determined by the courts." That was more or less what the plaintiff said in the case of *Annamunthodo* v. *Oilfields Workers' Trade Union* [1] where it was the defendants who were relying on their contractual rights to dismiss the plaintiff from membership of the union.

It is not the case here. The defendants have at no time set up any contractual stipulation that the matter should be concluded by the decision of a domestic tribunal. They have relied on their ordinary contractual rights and have been content to have these rights determined by the courts.

For the life of me I do not see that the plaintiffs are entitled to impute to them a defence they never attempted to put up and then to say that it is a bad defence and therefore they, the plaintiffs, are entitled to succeed in their action.

It is the plaintiffs who put an end to the contract and that should be the end of the matter.

I agree the appeal should be dismissed with costs.

Wee Chong Jin C.J. (Singapore): The appellants were employees of the City Council of Singapore and were employed as daily rated unskilled labourers. They were both dismissed from the respondents' employment on the 27th May 1957. The letters of dismissal signed by the deputy president of the City Council were in identical terms as follows:—

"You are hereby informed that it has been decided to terminate your service with immediate effect from the date of service of this notice, for misconduct, namely refusing to obey the instructions of a senior officer (i) to perform certain work on 23rd May 1957 and (ii) to go to the head office for an enquiry on the same day.

2. If you wish to appeal against this decision you must give notice to the assistant secretary (establishments committee) of your intention to do so *within 7 days* of receipt of this notice. Reasons for your appeal must also be given to him either orally or in writing within 14 days of the receipt of this notice. If you do not do this, then the establishments committee will not consider your appeal.

3. You may be permitted to appear before the establishments committee and be accompanied by an advocate and solicitor, or a member of your union who is an employee of the council or by a friend who is an employee of the council. In that case you must inform the assistant secretary (establishments committee) at the time of giving or sending him the reasons for your appeal.

4. Please acknowledge receipt of this notice.

Sd. Deputy President,
City Council."

They exercised their right of appeal and their appeals were heard by the sub-committee of the establishments committee on the 9th July 1957 who however dismissed the appeals.

They then commenced an action in the then High Court of the Colony of Singapore on the 4th December 1957 claiming in the writ of summons for:—

"1. A declaration

(a) that the dismissal of the plaintiffs from the employment of the defendants was wrongful;

(b) that the plaintiffs are in the employ of the defendants.

2. Payment of salary due to the plaintiffs for the period from 27th day of May 1957 to date of judgment.

3. Damages for wrongful dismissal of the plaintiffs from the defendants' employ.

4. Such other relief as the court may deem fit.

5. Costs."

The action eventually came up for hearing in July 1963 and on the first day of the trial the point was taken for the first time that an enquiry held by Mr. Roper the deputy electrical engineer on the 25th May 1957 as required by certain regulations formulated by the City Council governing the procedure to be followed before employees can be dismissed for misconduct was not conducted in accordance with the principles of natural justice thereby rendering the proceedings at the enquiry a nullity so that the City Council had no power to dismiss the appellants except after compliance with the relevant regulations. In due course the statement of claim was with the leave of the court amended to

permit this point to be taken.

The trial judge found on the facts that the City Council were justified in dismissing the appellants and that although Mr. Roper in conducting the enquiry was acting in a quasi-judicial capacity and in failing to record the statements of all the witnesses in the presence of the appellants and in supplying to the deputy president information without the appellants' knowledge had not acted in accordance with the principles of natural justice, the proceedings before the sub-committee of the establishments committee had been so conducted as to cure the failure to comply with all the rules of natural justice at the enquiry. In the result the appellants' action was dismissed.

Three points were raised before us. The first point was that the trial judge was wrong in law in holding that Mr. Roper's failure to comply with the rules of natural justice was cured by the proceedings before the sub-committee of the establishments committee. The second point was that the trial judge was wrong in law in holding that the appellants were under an obligation to perform work which attracted a higher rate of pay whether it was within the capabilities of an ordinary labourer or not and whether other labourers had or not done the work before. The third point was that the trial judge should have considered whether the appellants were justified in refusing to carry out the order or not by reference to whether they could reasonably be considered to have known that they should comply with the directions given.

I propose to deal with the third point first. It was argued that the appellants did not know they were under a duty to obey the order of Ishak, a serang, to carry out certain work in connection with a boiler at the Pasir Panjang Power Station. The appellants had refused to obey this order on the ground that the work should be done by boiler cleaners and not by labourers, that is to say that the work should be done by employees who were on a higher scale of salary than the appellants. The trial judge found that the appellant Kuttappan Nair had done the work before and rejected his evidence to the contrary. The other appellant was not present throughout the trial. The trial judge also accepted the evidence of the superintendent of this power station and Mr. Roper that other labourers had done the work before the 23rd May 1957. This point is therefore completely without any substance and in fact no attempt was made by counsel for the appellants to present any argument before us except merely to refer to it as a ground of appeal.

On the second point the evidence of the appellant Kuttappan Nair was that he knew he could be asked to do any unskilled work. He had entered the respondents' employment on 2nd February 1956, following on an application to the labour department, as a daily rated labourer. He first worked in the road department of the City Council stacking stones and tarring the surface of roads. The trial judge found that the work which the appellants were instructed to do and which they refused to do was unskilled work well within the capabilities of an ordinary labourer and this finding is not disputed before us. The other appellant as I have already stated was not present throughout the trial and gave no evidence at all. While there was evidence that erectors may have also done this work in May 1957 and that boiler cleaners may have also done this work before May 1957 and while there is evidence that after May 1957 only boiler cleaners did this work so as to prevent trouble with the union representing labourers employed by the City Council, this in my opinion is irrelevant. The appellants were not under their terms of employment employed to do a specific kind or type of work. They were employed as labourers and the finding of the trial judge that the work they refused to do was unskilled work which labourers could do and which in fact had been done by some labourers previously and which in fact one of the appellants had done previously is in my view a conclusive answer to the second point raised by the appellants.

There remains the first point. A set of rules or regulations relating to daily rated labourers was part of the evidence of the appellants (Exhibit P2). It contained *inter alia* a section under the heading "Discipline" and the relevant regulations under this heading are as follows:—

"1. The maintenance of discipline is essential and since proof of misconduct or dereliction of duty will be required before an employee can be dismissed, it is necessary for departments to pay particular attention to the question of disciplinary enquiries and the correct procedure to be adopted in disciplinary cases.

Broadly speaking, there are two types of cases which may call for action by departments:—

A. Misconduct which warrants a warning such as absence without permission, minor disobedience, late arrival, poor work.

B. Misconduct which the head of department considers warrants dismissal or other disciplinary action such as wilful disobedience to specified orders, theft of property, serious insubordination.

3. *Misconduct which the head of department considers merits dismissal.*

(a) Suspension with a view to dismissal and dismissal must be authorised by the president or deputy president.

(b) When the conduct of an employee is being considered with a view to his dismissal or punishment, the following procedure must be followed:—

(i) The head of department should first send a memo to or speak to the president or the deputy president outlining the case as it is then known to him. In the case of gross misconduct, this should be done imme-

diately. If the president or deputy president considers that the employee should be suspended pending an enquiry, he will authorise it.

(ii) The head of department will then hold or cause to be held an enquiry at which a welfare officer must be present. There should be no delay in the holding and completing of this enquiry and the record should be available for consideration by the president or deputy president within two or three days of the matter first being reported.

(iii) It is not part of the welfare officer's duty to conduct the enquiry. The enquiry must be conducted by a responsible officer from the department concerned.

(iv) The president or deputy president will then consider the full record of the enquiry and may cause such further supplementary enquiries to be held as he may deem necessary.

(v) The president or deputy president will then make his decision which will be conveyed to the head of department in writing and the head of department will cause the employee to be informed in writing.

(vi) If the decision is to dismiss the employee, a formal letter of dismissal will be signed by the president or deputy president and conveyed to the employee by the head of department. At the same time the employee will be informed that if he wishes to appeal he may give notice to the secretary of the establishments committee within seven days, and that if he gives such notice of appeal the substance of his appeal should be conveyed in writing within fourteen days.

(vii) If the employee wishes to appear before the establishments committee, then the officer of his department concerned with the subject matter of the enquiry should also be present at the same time.

(viii) For the information of all departments, a breach of any of the following might be held to be misconduct:—

(1) failure to obey all orders that are lawful and within the scope of the service undertaken."

It is clear on the evidence that the respondents in dismissing the appellants purported to act under these regulations. It is conceded by counsel for the respondents that the trial judge was correct in his view that in conducting the enquiry Mr. Roper had not acted in accordance with the rules of natural justice. The question remains: was the trial judge right in his view that when the appellants exercised their right of appeal under the regulations the fact that at the appeal they were represented by counsel and allowed to recall and cross-examine all the witnesses who made statements at the enquiry had cured the failure to comply with the rules of natural justice at the enquiry.

It is quite clear from these regulations and from the evidence that the decision of the deputy president to dismiss the appellants was arrived at after considering the record of the enquiry before Mr. Roper and the information supplied to him by Mr. Roper subsequent to the enquiry. It is also quite clear that under these regulations the appeal by the appellants to the establishments committee was against the decision of the deputy president.

There are no provisions in these regulations as to how such an appeal should be conducted nor are there any provisions as to how this appellate body should arrive at a decision on the appeal and how any decisions arrived at should be drawn up. Nor are there provisions in these regulations providing that an appeal of this nature can be heard by a sub-committee of the main committee.

In fact the appeal was not heard by the main committee but by a sub-committee of that committee and it would appear that the proceedings were recorded in the form of minutes (see pages 169 to 171 of the record) and the decision of the sub-committee was recorded in the following terms:

"After discussion, the sub-committee agrees unanimously to recommend that the appeal of Mr. Kuttappan Nair and Mr. M. Vasudevan Pillai, Labourers Nos. 2294 and 2295 respectively, Pasir Panjang Power Station, electricity department, against the decision of the president, City Council, to dismiss them from the service with effect from 28.5.57 be disallowed."

In those circumstances I am of the view that the trial judge was wrong in his conclusion that the proceedings before the sub-committee had cured the defective proceedings before Mr. Roper.

It seems to me on principle that where a quasi-judicial tribunal has failed to observe the rules of natural justice, such failure cannot be cured by the fact that on an appeal, the appellate tribunal has so conducted its proceedings as to observe all the rules of natural justice. If authority is needed, it can be found in the case of *Annamunthodo* v. *Oilfields Workers' Trade Union.*[1] In that case the appellant was a member of the respondent union and had been notified to appear before the general council of the union to answer four charges of offences against the rules of the union. He attended and denied the charges. The hearing was then adjourned for one week but he failed to appear at the adjourned hearing.

The next day he was informed by the general secretary that he had been convicted on all four charges and that the general council had as a result seen fit to expel him. He thereupon appealed to the annual conference of delegates, as provided for under the rules, but they upheld his expulsion. He then sought relief in the courts. None of the four charges against him entitled the general council to expel him and in expelling him the general counsel invoked a rule, a breach of which he had not been charged with. This rule created a separate and distinct offence but even if it did not it was held that it should not have been invoked without giving him notice of it and a fair opportunity of meeting it. It was also held that he had not lost his right to complain of this failure to observe the rules of natural justice by appeal to the annual conference of delegates. On this point Lord Denning who

delivered the judgment of the board said at ([1961] 3 All E.R. page 625):

"It was, therefore, quite proper for him to appeal to the annual conference before coming to the courts, even though he was not bound to do so. But, having appealed and failed he does not by so doing forfeit his right to redress in the courts. If the original order was invalid, for want of observance of the rules of natural justice, he can still complain of it, notwithstanding his appeal".

Counsel for the respondents relied on the case of *Andrea* v. *British Italian Trading Company, Ltd.*[2] and contended that the decision of the sub-committee superseded that of the deputy president and as it is not alleged that there was any failure on the part of the sub-committee to observe the rules of natural justice, the appellants cannot succeed on this point. In that case the English Court of Appeal held that it was clear under the rules appended to the contract which was the subject matter of an arbitration, where there is an appeal from an award of arbitrators or an umpire to the board of appeal, the award of the board of appeal supersedes that of the arbitrators or umpire and is the only binding award. There was a section in the Arbitration Act 1950 (section 23) enabling the High Court to set aside the award where an arbitrator or umpire has misconducted himself or the proceedings. The Court of Appeal held therefore that as the appellants had elected to appeal under the rules to the board of appeal rather than to proceed under section 23 of the Arbitration Act, the consequence of their doing so under the rules is that the award of the umpire was superseded by the award of the board of appeal, the tribunal of their own choice.

In the present case there were no rules similar to those appended to the contract in *Andrea's* case and it is clear from the evidence that notwithstanding the decision of the sub-committee, the decision of the deputy president summarily dismissing the appellants is the only existing decision.

I am accordingly of the opinion that the appellants have been wrongfully dismissed under these regulations. The matter does not end there however. They have chosen in bringing this action before the courts to contest the issue whether they were entitled to refuse to perform certain work they were instructed to perform and whether such refusal entitled the respondents to summarily dismiss them under their terms of employment. In their further and better particulars the appellants pleaded that "it was an implied term of the plaintiffs' employment that they could not be dismissed from service unless they committed misconduct or deliberately refused to carry out the lawful orders of their superiors which were confined to the type of work for which they were primarily engaged."

The trial judge has found on the evidence that they had wilfully refused to obey the lawful orders of their employers. He has also found that labourers, under which category the plaintiffs fall, were, under a document relied on by the appellants, obliged to do their work both inside and outside the power station. He has further found that the actual work which the appellants were called upon to do, the refusal to perform which resulted in their dismissal, was work which did not involve skill, was work well within the capabilities of an ordinary labourer and was work which the second appellant as well as other labourers had previously done. All these findings have not been challenged before us and indeed any such challenge would have been in my opinion entirely devoid of merit. On those findings the respondents in my opinion are entitled under the law of master and servant to dismiss the appellants summarily and this they did. The appellants have accordingly failed on this issue and it follows in my judgment that their appeal should be dismissed with costs.

Barakbah C.J. (Malaya) concurred.

Appeal dismissed.

Solicitors: *L. A. J. Smith; Drew & Napier.*

GULWANT SINGH v. ABDUL KHALIK

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) March 2, 1965]

[K.L. — Federal Court Civil Appeal No. 35 of 1964]

Moneylending — Book kept in compliance with s. 18, Moneylenders Ordinance, 1951 — Failure to record payment — Effect of.

Practice and Procedure — Appeal — Findings of fact — Point not raised at trial by defendant — Discretion.

The plaintiff a licensed moneylender lent a sum of money to the defendant. At the trial the plaintiff said the sum in question was $2,500 and the defendant said it was $2,000. The memorandum and promissory note which evidenced the transaction were for $2,500. Certain payments had been made by the defendant to the plaintiff who said these amounted to $500. The defendant said they amounted to $2,000. The trial judge ([1964] M.L.J. 286) found that the amount lent was $2,500 as averred by the plaintiff and that the amount repaid was $2,000 as averred by the defendant. On these findings he gave judgment for the plaintiff for $1,717.73 being the amount due by defendant by way of principal and interest, and costs. Against this decision both parties appealed. The plaintiff attacked the trial judge's finding that the amount repaid by the defendant was $2,000. The defendant attacked the finding that the original loan was $2,500. He also argued, although he did not raise the point at the trial, that if the trial judge's finding that the amount paid by him was $2,000 be upheld then the claim was wholly unenforceable because the plaintiff had not complied with section 18 of the Moneylenders Ordinance which relates to moneylenders' books. The moneylender's ledger produced at the trial showed that the only repayments recorded were three sums of $100 each. For the plaintiff it was submitted that this point had